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11 **UNITED STATES DISTRICT COURT**
12 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
13

14 DAVID M. DOYLE,
15 PLAINTIFF,
16
17 vs.
18

19 FAST ADVANCE FUNDING LLC,
20
21 DEFENDANTS.
22

Case No.: 2:18-CV-5412-DMG-FFM
Hon. Dolly M. Gee

**ANSWER AND AFFIRMATIVE
DEFENSES TO COMPLAINT**

23 Defendant Fast Advance Funding LLC (“Defendant”), through its counsel
24 Revolve Law Group LLP, hereby answers the Complaint of Plaintiff David M.
25 Doyle (“Plaintiff”) as follows:

Introduction

26 1. The allegations of paragraph 1 of the Complaint speak for themselves,
27 and reference to the Complaint is made for the precise language therein. Defendant
28 denies the allegations in paragraph 1 of the Complaint to the extent they are not

1 supported by the allegations in the Complaint and to the extent they assert any
2 wrongdoing on the part of Defendant.

3 2. Defendant denies the allegations in paragraph 2 of the Complaint.

4 3. The allegations in paragraph 3 of the Complaint contain conclusions
5 of law to which no response is required. To the extent such allegations are not
6 legal conclusions, Defendant deny allegations the allegations in paragraph 3 of the
7 Complaint.

8 4. Defendant denies the allegations in paragraph 4 of the Complaint.

9 5. Defendant denies the allegations in paragraph 5 of the Complaint.

10 6. Defendant denies the allegations in paragraph 6 of the Complaint.

11 **Jurisdiction and Venue**

12 7. The allegations in Paragraph 7 of the Complaint contain conclusions
13 of law to which no response is required. To the extent such allegations are not
14 legal conclusions, Defendant deny allegations the allegations of paragraph 7 of the
15 Complaint.

16 8. The allegations in paragraph 8 of the Complaint contain conclusions
17 of law to which no response is required. To the extent such allegations are not
18 legal conclusions, Defendant deny allegations the allegations of paragraph 8 of the
19 Complaint.

20 **Parties**

21 9. Defendant lack knowledge or information sufficient to form a belief
22 as to the truth of the allegations in paragraph 9 of the Complaint, and on that basis
23 denies same.

24 10. The allegations in paragraph 10 of the Complaint contain conclusions
25 of law to which no response is required. To the extent such allegations are not
26 legal conclusions, Defendant deny allegations the allegations of paragraph 10 of
27 the Complaint.

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Background

The Telephone Consumer Protection Act

11. The allegations contained in paragraph 18 of the Complaint contain what Plaintiff purports to be the legislative intent of and quotes from the Telephone Consumer Protection Act of 1991, 47 U.S.C. § 227, (“TCPA”). As such, Defendant refer to the TCPA, the contents of which speaks for itself, and deny the allegations contained in paragraph 18 to the extent they differ from or contradict the TCPA.

12. The allegations contained in paragraph 19 of the Complaint contain what Plaintiff purports to be the legislative intent of and quotes from the regulation 47 C.F.R. § 64.1200(c)(2). As such, Defendant respectfully refer to 47 C.F.R. § 64.1200(c)(2), the contents of which speaks for itself, and deny the allegations contained in paragraph 12 to the extent they differ from or contradict 47 C.F.R. § 64.1200(c)(2).

13. The allegations in paragraph 13 of the Complaint contain conclusions of law to which no response is required. To the extent such allegations are not legal conclusions, Defendant deny allegations the allegations of paragraph 13 of the Complaint. As such, Defendant respectfully refer to the statute and/or Regulations referenced by Plaintiff, the contents of which speaks for itself, and deny the allegations contained in paragraph 13 to the extent they differ from or contradict the opinion.

14. The allegations in paragraph 14 of the Complaint contain conclusions of law to which no response is required. To the extent such allegations are not legal conclusions, Defendant deny allegations the allegations of paragraph 14 of the Complaint. Defendant respectfully refer to the statute referenced by Plaintiff, the contents of which speaks for itself, and deny the allegations contained in paragraph 14 to the extent they differ from or contradict the opinion.

15. The allegations in paragraph 15 of the Complaint contain conclusions of law to which no response is required. To the extent such allegations are not legal conclusions,

Factual Allegations

18. Defendant admits the allegations contained in paragraph 18 of the Complaint.

19. Defendant lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 19 of the Complaint, and on that basis denies same.

21. Denied. Defendant avers on information and belief that Plaintiff uses said telephone line for business purposes also.

1 23. Denied as stated.

2 24. Denied as stated. Defendant's records indicate the March 26, 2018
3 call lasted three minutes fifty seconds.

4 25. Defendant lack knowledge or information sufficient to form a belief
5 as to the truth of the allegations in paragraph 25 of the Complaint, and on that
6 basis denies same.

7 26. Denied as stated. Defendant's records indicate the March 26, 2018
8 call lasted three minutes fifty seconds.

9 27. Denied as stated. Defendant's records indicate the subsequent call
10 made was March 27, 2018.

11 28. Denied as stated. Defendant's records indicate the single March 26,
12 2018 call lasted three minutes fifty seconds.

13 29. Denied as stated. Defendant's records indicate the single March 26,
14 2018 call lasted three minutes fifty seconds.

15 30. Admitted in so far as Steve Marucci spoke with Defendant who did
16 express interest in product.

17 31. Admitted in so far as Steve Marucci spoke with Defendant who did
18 express interest in product.

19 32. Admitted in so far as Steve Marucci spoke with Defendant who did
20 express interest in product.

21 33. Denied as stated, Defendant avers that Plaintiff's expression of
22 interest was specific and firm enough to constitute the solicitation for further
23 communication from Defendant.

24 34. Answering Defendant is without knowledge to affirm or deny
25 Plaintiff's factual allegations, however, Defendant denies Plaintiff's
26 characterization of the alleged legal precedent.

27

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1 35. Denied as stated. Defendant avers that Plaintiff's past communication
2 with Fast Advance Funding constituted explicit or implicit permission for further
3 communication. The time of said call is admitted.

4 36. Defendant is without information to affirm or deny.

5 37. Denied. It is denied that Defendant made a call at or about said
6 time.

7 38. Denied. It is denied that Plaintiff expressed the desire to cease
8 communication with Defendant.

9 39. Defendant admits that Plaintiff did receive additional call.

10 40. Denied. Defendant avers that Plaintiff gave express consent for
11 additional call.

12 41. Denied. Defendant avers that Plaintiff gave explicit consent for
13 additional calls.

14 42. Admitted.

15 43. Admitted.

16 44. Denied as stated. Defendant avers that Plaintiff's communication was
17 essentially a request for statutory damages under the TCPA, much like those
18 routinely received from professional TCPA litigants.

19 45. Statement of a regulation which speaks for itself, to the extent
20 Plaintiff attempts to define or interpret said regulation, the contents of paragraph
21 45 are denied.

22 46. Denied as stated. Defendant avers that Plaintiff's communication was
23 essentially a request for statutory damages under the TCPA, much like those
24 routinely received from professional TCPA litigants.

25 47. Statement of a regulation which speaks for itself, to the extent
26 Plaintiff attempts to define or interpret said regulation, the contents of paragraph
27 47 are denied.

28 48. Denied as stated.

1 68. Defendant denies the allegations in paragraph 68 of the Causes of
2 Action set forth in the Complaint.

3 **Seventh Cause of Action**

4 (Negligent Violation of the TCPA “Do-Not-Call List” Requirement,
5 47 CFR 64.1200, *et seq.*)

6 69. Defendant repeats and realleges the responses in the foregoing
7 paragraphs as though fully set forth herein.

8 70. Defendant denies the allegations in paragraph 70 of the Causes of
9 Action set forth in the Complaint.

10 **Eighth Cause of Action**

11 (Knowing and/or Willful Violation of the TCPA “Do-Not-Call List” Requirement,
12 47 CFR 64.1200, *et seq.*)

13 71. Defendant repeats and realleges the responses in the foregoing
14 paragraphs as though fully set forth herein.

15 72. Defendant denies the allegations in paragraph 72 of the Causes of
16 Action set forth in the Complaint.

17 **WHEREFORE**, Defendant demands judgment dismissing the Complaint
18 and awarding reasonable attorneys’ fees, costs of suit, and such other relief as the
19 Court may deem just and equitable.

20 **AFFIRMATIVE DEFENSES**

21 Without assuming the burden of proof where it otherwise lies, Defendant
22 assert the following affirmative defenses:

23 **FIRST AFFIRMATIVE DEFENSE**

24 The Complaint fails to state a cause of action for which relief can be granted.

25 **SECOND AFFIRMATIVE DEFENSE**

26 Plaintiff’s damages, if any, were not proximately caused by any act, error, or
27 omission of Defendant as a matter of law.
28

1 **THIRD AFFIRMATIVE DEFENSE**

2 Any damages sustained by Plaintiff, which are expressly denied, were
3 caused, in whole or in part, by the affirmative wrongdoing, negligence, want of
4 care, omissions, or other culpable conduct of Plaintiff and such persons other than
5 Defendant, without the affirmative acts of Defendant contributing thereto, and as a
6 consequence thereof, Plaintiff's damages, if any, should be reduced or barred
7 accordingly.

8 **FOURTH AFFIRMATIVE DEFENSE**

9 Any injuries were caused, in whole or in part, by the negligence or other
10 culpable conduct of third parties over which Defendant have no control or right of
11 control.

12 **FIFTH AFFIRMATIVE DEFENSE**

13 Plaintiff's own negligent, reckless, willful, and/or wanton conduct
14 contributed to his alleged damages, if any.

15 **SIXTH AFFIRMATIVE DEFENSE**

16 Plaintiff has failed to join and include in this action all identifiable and
17 indispensable parties without whom, in equity and fairness, this action should not
18 proceed.

19 **SEVENTH AFFIRMATIVE DEFENSE**

20 Defendant substantially complied in good faith with applicable provisions of
21 the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. §§ 227, *et seq.*, and
22 is entitled to each and every defense afforded to it by that statute. Specifically, if
23 Defendant committed any violation of the TCPA, which is denied, it was not
24 intentional and resulted from a *bona fide* error notwithstanding the maintenance of
25 procedures reasonably adapted to avoid any such error.

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1 **EIGHTH AFFIRMATIVE DEFENSE**

2 No acts or omissions by Defendant were an actual cause, legal cause,
3 contributing cause, substantial factor, or proximate cause with respect to the
4 damages, if any, sustained by Plaintiff.

5 **NINTH AFFIRMATIVE DEFENSE**

6 Plaintiff's alleged injuries were not due to any breach of duty by Defendant.

7 **TENTH AFFIRMATIVE DEFENSE**

8 To the extent that Plaintiff has agreed not to sue or has compromised, settled, or
9 otherwise reached some arrangement with any other party, then such is a complete
10 bar to this action as satisfaction thereof. In the alternative, should the Court find
11 this not to be a bar, the jury should be advised of the agreements of Plaintiff and
12 any monetary amounts involved so that Defendant can be credited with or receive
13 an offset for said amounts Plaintiff has already received so as to prevent "double
14 recovery" by Plaintiff.

15 **ELEVENTH AFFIRMATIVE DEFENSE**

16 To the extent Plaintiff seeks punitive damages in this case, any such
17 damages must be based upon a finding of intentional, malicious, reckless, and/or
18 conscious criminal misconduct by Defendant and Plaintiff cannot meet this
19 burden. Any award of punitive damages based upon a lesser standard would be a
20 violation of Defendant's right to due process of law under both the Pennsylvania
21 and United States Constitutions.

22 **TWELFTH AFFIRMATIVE DEFENSE**

23 Some or all of Plaintiff's claims are barred by the applicable statute(s) of
24 limitations or repose, and/or by the equitable doctrine of laches, waiver, and
25 estoppel.

26 **THIRTEENTH AFFIRMATIVE DEFENSE**

27 Plaintiff has failed to mitigate his damages, if any.
28

1 **FOURTEENTH AFFIRMATIVE DEFENSE**

2 The complaint and each cause of action contained therein are barred because
3 Plaintiff provided prior express consent, through an established business
4 relationship or otherwise, that he be called on his cell phone number.

5 **FIFTEENTH AFFIRMATIVE DEFENSE**

6 With regard to some of the calls made by Defendant, the subject telephone
7 system did not employ the use of a prerecorded or artificial voice under the TCPA.

8 **SIXTEENTH AFFIRMATIVE DEFENSE**

9 Defendant have established and implemented, with due care, reasonable
10 practices and procedures to effectively prevent telephone solicitations in violation
11 of the regulations prescribed under the TCPA. 47 U.S.C. § 227(C)(5).

12 **SEVENTEENTH AFFIRMATIVE DEFENSE**

13 The complaint and each cause of action contained therein may be barred as
14 to any alleged cell phone calls received by plaintiff where the calls were not
15 charged to him (e.g., unlimited cell phone plans). See, e.g., 47 U.S.C.
16 §227(b)(2)(C).

17 **EIGHTEENTH AFFIRMATIVE DEFENSE**

18 Plaintiff consented to the acts and events set forth in the complaint.

19 **NINETEENTH AFFIRMATIVE DEFENSE**

20 Defendant hereby reserve the right to supplement their affirmative defenses
21 at any time prior to trial.

22
23 Dated: July 13, 2018

REVOLVE LAW GROUP LLP

24 By: /s/ Kimberly A. Wright

25 Kimberly A. Wright

26 Attorneys for Defendant Fast Advance
27 Funding LLC
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CERTIFICATE OF SERVICE

I hereby certify that on June 13, 2018, I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Central District of California using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Kimberly A. Wright

Kimberly A. Wright